

CRIMINAL APPEAL NO. 1 OF 2003

State of Goa,
through Police Inspector,
Calangute Police Station.

... Petitioner.

Versus

John alias Joao Luis
Miranda, r/o House No.186,
Umta Vaddo, Calangute,
Goa.

... Respondent.

Shri S. N. Sardessai, Public Prosecutor for the State.

Shri S. D. Lotlikar, Senior Advocate with Shri A. D. Bhohe, advocate, appointed under Legal Aid Scheme for the respondent.

CORAM : A. M. KHANWILKAR &
P. V HARDAS, JJ.

DATE : 2nd December, 2003.

ORAL JUDGMENT (Per Hardas, J.)

The State, being aggrieved by the Judgment of the Sessions Judge, Panaji, dated 23rd August, 2002, in Sessions Case No.29 of 2001, acquitting the respondent/accused for offences punishable under Sections 302 and 307 of the Indian Penal Code, has filed the present appeal.

2. The facts in brief as are necessary for the decision of the Appeal are stated hereunder:-

P.W.1, Alex Fernandes, lodged a complaint with the Calangute Police Station, Exh.9, on 27th March, 2001, alleging therein that the respondent/accused had murdered his wife and a son aged 4 years and had attempted to kill his daughter aged 1 1/2 years. On the basis of the said

Report, an offence vide Cr. No.36/2001 under Sections 302 and 307 of the Indian Penal Code came to be registered. A scene of offence panchanama came to be drawn in the presence of P.W.2, Elvis Pereira, at Exh. 11. The minor daughter of the accused was removed to the Goa Medical College Hospital for treatment. The inquest panchanama of the wife and son of the accused at Exh.12 was drawn. A coita (sickle) which was seen at the scene of the offence and apparently was used as a weapon for the commission of the offence, came to be attached. Similarly, two small knives, silver coloured, with jute strings, were also attached. The photographs at Exh.19 colly. were taken by a photographer. The dead bodies were referred for post-mortem examination and the post-mortem was carried out by P. W.7, Dr. E. J. Rodrigues. P. W.7, Dr. E. J. Rodrigues had conducted the post-mortem examination on the dead body of the deceased Ballis, wife of the accused and had found the following injuries:-

- "1. Chop wound of 7 x 1 cm x bone deep, vertically oblique, present on right side medial posterior parietal region of scalp. The anterior end is close to midline and the posterior end is 3 cms. to the right of the midline and 5 cms. in front of external occipital protuberance. Both edges are clean cut and both angles are acutely acute. It has made a corresponding cut of 6 cms. length on the right side parietal bone.
2. Chop wound of 7 x 1.5 cms. x 4 cms. on the upper back of nape of neck at hair line level at C-4 level with effusion of blood. It is horizontal with 5 cms. part of right side midline, 5 cms. above C-7 level.
3. Incised puncture wound of 1.5 cms. x 1 cm.

at the right side angle of mandible with corresponding cut at right side mandible of 1 cm. length.

4. Superficial laceration of 1.5 cms. on mucousal surface of left side lower lip.
5. Oblique abrasion of 3 x 0.5 cms. reddish on top of right shoulder.
6. Oblique abrasion of 5 x 0.5 cms. on upper outer aspect of the right arm reddish in colour.
7. Oblique abrasion of 4 x 0.5 cms., upper back of right shoulder reddish in colour.
8. Linear abrasion of 1.5 cms. x 2 mm. over left upper front of arm reddish in colour.
9. Abrasion of 1.5 x 0.5 cms. lower medial aspect of left forearm.
10. Bruise reddish of 1.5 x 0.5 cms., 3 cms., medial to outer end of right clavicle."

3. He had also conducted the post-mortem on Reginaldo, son of the accused and had found the following injuries:-

- "1. Chop wound of 7 x 1.5 cms. x bone deep on left side of posterior parietal region obliquely placed. Outer end is 6 cms. above left mastoid and inner end is 1 cm. from midline to left. Both edges are clean cut and both angles acutely cut with corresponding cut of 8 cms. length in left parietal bone.
2. Horizontal chop wound of 7 x 1.5 x 1 cm. in midline 4 cms., above C7.
3. Chop wound of 5 x 0.5 x 0.5 cms., from left side of neck 1 cm. above injury no.2.
4. Chop wound of 10 x 4 cms., with exposure of skull bone with multiple cuts on left side of mastoid and parietal occipital bone with cut in the Dura and also in the brain with exposure of brain matter on left side. There are 2 niche in the lower margin of chop wound.

5. Chop wound of 8 x 2 cms., x bone deep vertically placed. It has cut the outer half of left ear and with a corresponding cut in the left mastoid bone."

According to him, the injuries on the dead body of the wife of the accused were caused by a sharp cutting weapon, while injuries no. 4 to 10 were caused by a blunt object. In respect of the injuries on the body of Reginaldo, he opined that injuries no. 1 to 5 were caused by sharp cutting weapon. According to him, the cause of death in respect of Ballis was due to head injury consequent to impact by moderately heavy cutting weapon, which was necessarily fatal. He has stated that the injuries could be caused by M.O.1, coita. The post-mortem report is at Exhs. 21 and 22 respectively. The accused was arrested and had sustained burn injuries on his back and buttocks and therefore, was sent to the Goa Medical College Hospital, Bambolim, for treatment. He was examined by Dr. Silvano Dias Sapeco. According to him, he opined that the accused was harbouring a mental illness and needed to be admitted at the Institute of Psychiatry and Human Behaviour, Altinho. The report of the examination of the accused is at Exh.27. The accused was admitted in the Institute of Psychiatry and Human Behaviour and was examined by P.W.10, Dr. Pushpa Dukle. the accused was admitted on 2nd April, 2001 and was discharged on 8th June, 2001. The certificate of the examination of the accused is at Exh. 32. The accused was diagnosed provisionally as a case of unspecified psychosis needing further hospitalization for diagnosis and complete

recovery.

4. Further to the completion of the investigation, a chargesheet against the accused came to be filed.

5. The learned Sessions Judge, Panaji, vide Exh. 4 framed charge against the accused for an offence punishable under Sections 302 and 307 of the Indian Penal Code. The accused denied his guilt and claimed to be tried. The prosecution in support of its case examined 15 witnesses.

6. The trial Court categorized the evidence of the prosecution into five categories. The first category consisted of the evidence of the witnesses who had arrived at the scene of the offence immediately after the incident and had seen the accused standing outside his house; the second category consisted of medical evidence in respect of the post-mortem of the wife and son of the accused and the injuries sustained by the daughter of the accused; the third category consisted of the medical evidence in respect of the examination of the accused; the fourth category consisted of the evidence of the panch witnesses of the scene of the offence and the attachment panchanama; and the fifth category consisted of the evidence of the other witnesses.

7. In respect of the first category, the prosecution evidence consists of P.W.1 Alex Fernandes, P.W.3, John Lobo, P. W.4, Petricio Ratos, and P.W.5, Luis Pinto. P.W.1, Alex Fernandes, states that on 26th March, 2001 at about 11.30 p.m. he heard some noise near the house of the accused and, therefore, he went near the house of the accused and saw the accused standing outside his house. On entering the room of the accused, he saw the wife and two children of the accused lying on the ground in a pool of blood. According to P.W.1, Alex Fernandes, the door of the house of the accused was opened by the people forcibly before he had reached the spot. P.W.3, John Lobo, has stated that on 26th March, 2001, at about 11 p.m. he heard some noise and came outside his house. He saw his neighbour P.W.1, Alex Fernandes, going towards the house of the accused and he, therefore, followed him. He heard P.W.1, Alex Fernandes, asking the accused as to why he had acted in that fashion and had also heard him asking the accused why he had committed the act of beating his wife and children. P.W.4, Petricio Ratos states that on 26th March, 2001, at about 11.30 p.m. he heard the knocking on the door of the house of the accused he heard shouts of the mother of the accused for help. He, therefore, went near the house of the accused and saw the accused standing outside his house. He found that the clothes of the accused had caught fire and the mother of the accused was shouting for help. P.W.4, Petricio Ratos, has further stated that he asked the accused

as to what he did and the accused replied saying that nobody was giving any respect to him. P.W.5, Luis Pinto, has deposed that on 26th March, 2001, he had seen the accused outside his house. The learned trial Court has found that the evidence of these witnesses suggested that none of them had seen the accused actually committing the offence. All these witnesses had seen the accused standing outside his house. The learned trial Judge also found that the prosecution had not examined the witnesses who had allegedly forcibly broken open the door of the room of the accused. According to the learned Judge, the evidence of these witnesses would have shed light whether the accused was inside the room. The learned Judge has also not accepted part of the evidence of P.W.3, John Lobo, about P.W.1, Alex Fernandes, asking him as to why he had committed the act of killing his wife and children as P.W.1 has not deposed to it. The learned Judge also found that the evidence of P.W.4, Petricio Ratos, revealed that the mother of the accused was present and she has not been examined. The learned Judge therefore found that there was absolutely no evidence in respect of anyone having seen the accused committing the offence.

8. The learned Judge then examined the evidence in respect of the injuries suffered by the wife and son of the accused and the injuries sustained by the daughter of the accused. The learned trial Judge found that the medical

evidence in respect of the finding of the injuries on the two dead bodies and on the person of the daughter of the accused was not in dispute. The learned Judge then examined the medical evidence in respect of the respondent/accused and found that there was no evidence as to how and in what manner the accused had suffered the burn injuries and, therefore, the injuries sustained by the accused could not be used as a circumstance against the accused. The learned trial Judge then examined the evidence of the witnesses in respect of the attachment of the articles and the scene of the offence panchanama and came to the conclusion that the prosecution fell short of proving the offence against the accused beyond reasonable doubt.

9. With the assistance of the learned counsel for the appellant and the respondent, we have perused the judgment and the testimonies of the witnesses. According to us, the prosecution ought to have examined the witnesses who had forcibly broken open the door of the room of the accused as that evidence would have clearly indicated the presence of the accused inside the room. However, since the prosecution has not examined those witnesses the evidence of the other witnesses only indicates that the accused was seen outside his house with his clothes on fire. The prosecution has also not examined the mother of the accused who was, admittedly, present at the scene of the offence. The prosecution evidence, therefore, does not unerringly point

to the guilt of the accused. This is an appeal against acquittal and the view taken by the learned trial Court is a possible view to be taken on the basis of the evidence on record, and we see no perversity in the reasoning of the learned trial Judge to warrant any interference in the present appeal against acquittal.

10. The Appeal is, therefore sans merit and the same is dismissed. Criminal Appeal No. 1 of 2003 is dismissed. The bail bonds of the accused are cancelled.

A. M. KHANWILKAR, J.

P. V. HARDAS, J.

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